

Message Text

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FM AMEMBASSY SAN JOSE
TO SECSTATE WASHDC IMMEDIATE 5452

CONFIDENTIAL SECTION 2 OF 2 SAN JOSE 3901

EXDIS

7. THE EMBASSY APEALED THE DECISION TO THE HIGHER COURT ON JULY 12. IN BOTH THIS APPEAL AND THE ONE MADE JUNE 27, COMPREHENSIVE, AND WE BELIEVE COGENT, ARGUMENTS WERE PRESENTED ON PRECISELY THESE POINTS AND REFERENCE IS MADE TO THE BRIEFS. A SUPPLEMENTARY BRIEF WAS PRESENTED ON JULY 20 ANSWERING PERIPHERAL ARGUMENTS BY VESCO'S LAWYERS.

8. ON JULY 23, THE SEGUNDA SALA RULED AGAINST US, ENDING THE PROCESS. THE DECISION RULED THAT THE CASE WAS NOT EXTRADITABLE BECAUSE IT DEALT WITH ATTEMPTED FRAUD AND THIS WAS NOT LISTED IN ARTICLE 2 OF THE TREATY; THE DECISION EMPHASIZED THAT THE ONLY ATTEMPTED CRIME COVERED IS MURDER. IT ALSO INSISTED THAT EXTRADITION WAS POSSIBLE ONLY UNDER THE PRECISE TERMS OF THE TREATY, THEREBY REJECTING OUR ARGUMENTS THAT ATTEMPTED FRAUD WAS EXTRADITABLE UNDER COSTA RICAN LAW AND SHOULD BE EXTRADITABLE UNDER THE TREATY, AS WELL AS BY INTERPRETATION AND COURTESY IF IT WAS NOT EXPRESSLY PROHIBITED. THE COURT DID ACCEPT OUR ARGUMENTS, HOWEVER, THAT THE USE OF CABLES TO COMMIT FRAUD WAS EXTRADITABLE THEREBY OVERRULING THE FIRST PENAL JUDGE. THE DECISION STATED. "FRAUD COMMITTED BY MEANS OF CABLES IS INCLUDED IN THE TREATY

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AND SANCTIONED UNDER COSTA RICAN LAW. IN BOTH THE TREATY AND THE LAW, THE REFERENCE IS TO FRAUD IN ITS GENERIC SENSE, COVERING AS ALCONSEQUENCE WHATEVER MEANS ARE USED

TO REALIZE IT, WHETHER IT IS USE OF THE TELEGRAPH, RADIO OR TELEVISION, ETC. THE POINT TO ANALYZE IS WHETHER THE ATTEMPT TO COMMIT THIS CRIME (FRAUD) AFFORDS A BASIS FOR AUTHORIZING EXTRADITION, UNDER THE TREATY".

9. IT MIGHT BE USEFUL TO POINT OUT OTHER QUESTIONS WHICH THE FIRST PENAL JUDGE NOTED BUT DID NOT EXAMINE. HE STATED THAT SINCE ENOUGH MATERIAL WAS AVAILABLE TO REACH A DECISION, IT WAS UNNECESSARY TO CONSIDER ALSO WHETHER THE APPLICABLE PUNISHMENT IS SPECIFIED, WHETHER THE STATUTE OF LIMITATIONS HAS EXPIRED, WHETHER VESCO WAS OR WAS NOT IN COSTA RICA, OR TO EXAMINE THE EVIDENCE OF PROBABLE QUILT ON WHICH THE CHARGE IS BASED.

10. COPIES OF THE FOLLOWING DOCUMENTS WERE TRANSMITTED TO ARA/CEN AND L/M/SCA, AND WE ASSUME ARE IN HAND: EMBASSY'S JUNE 7 NOTE AND ORIGINAL SWORN COMPLAINT; OUR APPEAL TO HIGHER COURT ON ARREST ORDER; JUNE 27 APPEAL TO FIRST PENAL JUDGE ON MERITS; SUPPLEMENTARY BRIEF TO HIGHER COURT OF JULY 20; AND THE HIGHER COURT'S FINAL DECISION OF JULY 23.

11. WE ARE POUCHING OTHER COURT DECISIONS AND BRIEFS WHICH WE APPARENTLY DID NOT SUBMIT EARLIER.

VAKY

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<< END OF DOCUMENT >>

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